

BOIES SCHILLER FLEXNER LLP
 RICHARD J. POCKER (NV Bar No. 3568)
 300 South Fourth Street, Suite 800
 Las Vegas, NV 89101
 Telephone: 702.382.7300
 Facsimile: 702.382.2755
 rpocker@bsflp.com

PAUL, WEISS, RIFKIND, WHARTON &
 GARRISON LLP
 WILLIAM A. ISAACSON (*pro hac vice*)
 KAREN DUNN (*pro hac vice*)
 2001 K Street, NW
 Washington, DC 20006
 Telephone: 202.223.7300
 Facsimile: 202.223.7420
 wisaacson@paulweiss.com
 kdunn@paulweiss.com

BOIES SCHILLER FLEXNER LLP
 SEAN P. RODRIGUEZ (*pro hac vice*)
 44 Montgomery Street, 41st Floor
 San Francisco, CA 94104
 Telephone: 415.293.6800
 Facsimile: 415.293.6899
 srodriguez@bsflp.com

MORGAN, LEWIS & BOCKIUS LLP
 BENJAMIN P. SMITH (*pro hac vice*)
 JOHN A. POLITO (*pro hac vice*)
 SHARON R. SMITH (*pro hac vice*)
 One Market, Spear Street Tower
 San Francisco, CA 94105
 Telephone: 415.442.1000
 Facsimile: 415.442.1001
 benjamin.smith@morganlewis.com
 john.polito@morganlewis.com
 sharon.smith@morganlewis.com

DORIAN DALEY (*pro hac vice*)
 DEBORAH K. MILLER (*pro hac vice*)
 JAMES C. MAROULIS (*pro hac vice*)
 ORACLE CORPORATION
 500 Oracle Parkway, M/S 5op7
 Redwood City, CA 94070
 Telephone: 650.506.4846
 Facsimile: 650.506.7114
 dorian.daley@oracle.com
 deborah.miller@oracle.com
 jim.maroulis@oracle.com

*Attorneys for Plaintiffs Oracle USA, Inc.,
 Oracle America, Inc., and Oracle
 International Corp.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ORACLE USA, INC.; a Colorado corporation;
 ORACLE AMERICA, INC.; a Delaware
 corporation; and ORACLE INTERNATIONAL
 CORPORATION, a California corporation,

Plaintiffs,

v.

RIMINI STREET, INC., a Nevada corporation;
 and SETH RAVIN, an individual,

Defendants.

Case No. 2:10-cv-0106-LRH-VCF

**ORACLE'S MOTION TO SEAL
 ORACLE'S MOTION FOR ORDER
 TO SHOW CAUSE WHY RIMINI
 STREET, INC. SHOULD NOT BE
 HELD IN CONTEMPT AND
 SUPPORTING DECLARATIONS
 AND EXHIBITS**

NOTICE OF MOTION AND MOTION

Pursuant to the Stipulated Protective Order governing confidentiality of documents entered by the Court on May 21, 2010, ECF No. 55 (“Protective Order”), Local Rules 10-5(b), Rules 5.2 and 26(c) of the Federal Rules of Civil Procedure, Plaintiffs Oracle USA, Inc., Oracle America, Inc., and Oracle International Corporation (collectively “Oracle”) respectfully request that the Court order the Clerk of the Court to file under seal the following documents:

- Portions of Oracle’s Motion for Order to Show Cause Why Rimini Street, Inc. Should Not Be Held in Contempt (“OSC Motion”);
- Portions of the Declaration of John A. Polito Supporting Oracle’s Motion (“Polito Declaration”);
- Portions of the Declaration of Barbara Frederiksen-Cross Supporting Oracle’s Motion (Frederiksen-Cross Declaration);
- Portions of the Appendix of Exhibits Supporting Oracle’s Motion; and
- Exhibits 1–22, 24–34, and 36–40 to the Appendix of Exhibits.

Public, redacted versions of Oracle’s Motion and these Declarations and Exhibits were filed on July 10, 2020. ECF Nos. 1365, 1366. Unredacted versions of these documents will be subsequently filed under seal with the Court and linked to the filing of this motion.

Oracle’s Motion to Seal is based on this Notice of Motion, the accompanying Memorandum of Points and Authorities, the Declaration of James C. Maroulis in Support of Oracle’s Motion to Seal Oracle’s Motion for Order to Show Cause Why Rimini Street, Inc. Should Not Be Held in Contempt (“Maroulis Sealing Decl.”), the Declaration of John A. Polito in Support of Oracle’s Motion to Seal Oracle’s Motion for Order to Show Cause Why Rimini Street, Inc, Should Not Be Held in Contempt (“Polito Sealing Decl.”), documents incorporated by reference, and the entire record in this action.

MEMORANDUM OF POINTS AND AUTHORITIES

I. LEGAL STANDARD

Federal Rule of Civil Procedure 26(c) provides broad discretion for a trial court to permit sealing of court documents for, *inter alia*, the protection of “a trade secret or other confidential research, development, or commercial information.” Fed. R. Civ. P. 26(c). The Ninth Circuit has held that “compelling reasons must be shown to seal judicial records attached to a dispositive motion” based on the presentation of “articulable facts.” *Kamakana v. City & County of Honolulu*, 447 F.3d 1172, 1179, 1181 (9th Cir. 2006). Courts have discretion to determine what constitutes a “compelling reason,” and have found “sources of business information that might harm a litigant’s competitive standing” are sufficient to meet the “compelling reasons” standard. *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (internal citations omitted).

II. ARGUMENT

Oracle requests that Court seal Exhibits 1–5, 6, 10, 12, 13, 16, 18, and 36 as described below and further requests that the Court seal those portions of the OSC Motion and Frederiksen-Cross Declaration as described below. *See* Polito Sealing Decl. ¶¶ 3–14; Maroulis Sealing Decl. ¶ 3. Oracle also requests that the Court seal portions of the Polito Declaration, Frederiksen-Cross Declaration, portions of the Appendix of Exhibits, along with Exhibits 1–22, 24–34, and 36–40 and the corresponding portions of the OSC Motion referencing these materials because they each reference documents or testimony that Rimini has designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” under the Protective Order or material that has been designated similarly on behalf of third parties.

Exhibits 1–5 are side-by-side comparisons of source code between non-public Oracle source code files and source code files produced by Rimini in this litigation that accompanied the expert reports submitted by Oracle’s technical expert, Barbara Ann Frederiksen-Cross. Polito Sealing Decl. ¶ 5. The source code comparisons in Exhibits 1–5 contain non-public,

1 technologically, and commercially sensitive information relating to Oracle's PeopleSoft and JD
2 Edwards software. *Id.* The public disclosure of this information would create a significant risk
3 of competitive injury and particularized harm, and would prejudice Oracle. Maroulis Sealing
4 Decl. ¶ 3. Oracle's competitors and potential competitors could use such information in
5 competition with Oracle. *Id.* Oracle therefore requests that the Court seal the entirety of
6 Exhibits 1–5.

7 Exhibit 6 contains transcript excerpts from the January 17, 2020 Rule 30(b)(6) Deposition
8 of Craig Mackereth that was taken in this case. Polito Sealing Decl. ¶ 6. Portions of Exhibit 6
9 (including at 204:5–23) contain non-public, technologically, and commercially sensitive
10 information relating to Oracle's JD Edwards software. *Id.* The public disclosure of this
11 information would create a significant risk of competitive injury and particularized harm, and
12 would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's competitors and potential
13 competitors could use such information in competition with Oracle. *Id.* Oracle therefore
14 requests that the Court seal these identified portions in Exhibit 6.

15 Exhibit 10 contains excerpts from Oracle Deposition Exhibit 1841 introduced during the
16 January 17, 2020 Rule 30(b)(6) Deposition of Craig Mackereth in this case. Polito Sealing Decl.
17 ¶ 7. Portions of Exhibit 10 (including RSI006850428) contain non-public, technologically, and
18 commercially sensitive information relating to Oracle's JD Edwards software. *Id.* The public
19 disclosure of this information would create a significant risk of competitive injury and
20 particularized harm, and would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's
21 competitors and potential competitors could use such information in competition with Oracle. *Id.*
22 Oracle therefore requests that the Court seal these identified portions in Exhibit 10.

23 Exhibit 12 contains excerpts from an internal Rimini business record. Polito Sealing Decl.
24 ¶ 8. Portions of both pages of Exhibit 12 contain non-public, technologically, and commercially
25 sensitive information relating to Oracle's PeopleSoft software. *Id.* The public disclosure of this
26 information would create a significant risk of competitive injury and particularized harm, and
27

1 would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's competitors and potential
2 competitors could use such information in competition with Oracle. *Id.* Oracle therefore
3 requests that the Court seal Exhibit 12.

4 Exhibit 13 contains excerpts from another internal Rimini business record. Polito Sealing
5 Decl. ¶ 9. Portions of both pages of Exhibit 13 contain non-public, technologically, and
6 commercially sensitive information relating to Oracle's PeopleSoft software. *Id.* The public
7 disclosure of this information would create a significant risk of competitive injury and
8 particularized harm, and would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's
9 competitors and potential competitors could use such information in competition with Oracle. *Id.*
10 Oracle therefore requests that the Court seal Exhibit 13.

11 Exhibit 16 is an internal spreadsheet produced by Rimini. Polito Sealing Decl. ¶ 10.
12 Portions of both pages of Exhibit 16 contain non-public, technologically, and commercially
13 sensitive information relating to Oracle's PeopleSoft software. *Id.* The public disclosure of this
14 information would create a significant risk of competitive injury and particularized harm, and
15 would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's competitors and potential
16 competitors could use such information in competition with Oracle. *Id.* Oracle therefore requests
17 that the Court seal Exhibit 16.

18 Exhibit 18 contains excerpts of a document produced by Rimini bearing the Bates number
19 RSI006913538. Polito Decl. ¶ 11. Each page of Exhibit 18 contains non-public, technologically,
20 and commercially sensitive information relating to Oracle's PeopleSoft software. *Id.* The public
21 disclosure of this information would create a significant risk of competitive injury and
22 particularized harm, and would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's
23 competitors and potential competitors could use such information in competition with Oracle. *Id.*
24 Oracle therefore requests that the Court seal Exhibit 18.

25 Exhibit 36 is a document produced by Rimini bearing the Bates number RSI007038524.
26 Polito Sealing Decl. ¶ 12. Portions of Exhibit 36 (including RSI007038525) contain non-public,
27

1 technologically, and commercially sensitive information relating to Oracle's PeopleSoft software.
2 *Id.* The public disclosure of this information would create a significant risk of competitive injury
3 and particularized harm, and would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's
4 competitors and potential competitors could use such information in competition with Oracle. *Id.*
5 Oracle therefore requests that the Court seal these identified portions in Exhibit 36.

6 With respect to Oracle's OSC Motion, portions of this motion (including at 15:24, 15:28,
7 21:10, 21:12, 25:1, 25:15, 25:18, and n.12) contain non-public, technologically and commercially
8 sensitive information relating to Oracle's PeopleSoft and JD Edwards software. Polito Sealing
9 Decl. ¶ 13. The public disclosure of this information would create a significant risk of
10 competitive injury and particularized harm, and would prejudice Oracle. Maroulis Sealing Decl.
11 ¶ 3. Oracle's competitors and potential competitors could use such information in competition
12 with Oracle. *Id.* Oracle therefore requests that the Court seal these identified portions in Oracle's
13 OSC Motion.

14 With respect to the Frederiksen-Cross Declaration, portions of this declaration (including
15 paragraphs 31, 33, 56, 57, 59, 61–65, 77–79, 87, 94, 97, 98, 99, 101, 102, 104, and 107) contain
16 non-public, technologically and commercially sensitive information relating to Oracle's
17 PeopleSoft and JD Edwards software. Polito Sealing Decl. ¶ 14. The public disclosure of this
18 information would create a significant risk of competitive injury and particularized harm, and
19 would prejudice Oracle. Maroulis Sealing Decl. ¶ 3. Oracle's competitors and potential
20 competitors could use such information in competition with Oracle. *Id.* Oracle therefore requests
21 that the Court seal these identified portions in Oracle's OSC Motion

22 Oracle would be harmed by the disclosure of the information contained in Exhibits 1–5
23 and those portions of the OSC Motion, Frederiksen-Cross Declaration, and Exhibits 6, 10, 12, 13,
24 16, 18, and 36 already discussed. As a result, these materials should be sealed. *Ctr. for Auto*
25 *Safety*, 809 F.3d at 1097 (“sources of business information that might harm a litigant's
26 competitive standing,” constitute “compelling reasons” to seal); *Icon-IP Pty Ltd. v. Specialized*

1 *Bicycle Components, Inc.*, No. 12- CV-03844-JST, 2015 WL 984121, at *2 (N.D. Cal. Mar. 4,
2 2015) (“pricing, profit, and customer usage information, when kept confidential by a company, is
3 appropriately sealable under the ‘compelling reasons’ standard where that information could be
4 used to the company’s competitive disadvantage”); *U.S. Ethernet Innovations, LLC v. Acer, Inc.*,
5 C 10-3724 CW, 2013 WL 4426507, at *4-5 (N.D. Cal. Aug. 14, 2013) (granting third party
6 plaintiffs motion to seal after finding that third party plaintiffs licensing and settlement agreement
7 contained sensitive information). Because of these compelling reasons to seal documents
8 containing Oracle’s confidential technical information, the Court should grant Oracle’s motion to
9 seal at least as to Exhibits 1–5 and the identified portions the OSC Motion, Frederiksen-Cross
10 Declaration, and Exhibits 6, 10, 12, 13, 16, 18, and 36.

11 Oracle also requests that the Court seal portions of the Polito Declaration, Frederiksen-
12 Cross Declaration, portions of the Appendix of Exhibits, along with 1–22, 24–34, and 36–40 and
13 the corresponding portions of the OSC Motion referencing these materials because they each
14 reference documents or testimony that Rimini has designated as “Confidential” or “Highly
15 Confidential – Attorneys’ Eyes Only” under the Protective Order, reflect information drawn from
16 data sources that Rimini has designated as “Highly Confidential – Attorneys’ Eyes Only,” or
17 otherwise consist of material that has been designated similarly on behalf of third parties by
18 Oracle pursuant to the parties’ agreement regarding third-party productions of documents. Oracle
19 submits these documents under seal pursuant to the Protective Order based on Rimini’s
20 representation that it reasonably believes there is a valid basis under the Protective Order for its
21 confidentiality designations (and to give Rimini sufficient time to preserve confidentiality as to
22 materials produced in this litigation by third parties). Because these materials were designated by
23 Rimini and other parties, Oracle is not in a position to provide further justification for why filing
24 the documents publicly would cause Rimini harm sufficient to justify sealing.

Oracle has submitted all other portions of its Motion and supporting documents to the Court's public files, which allows public access to all materials except for the items discussed above. Accordingly, Oracle's request to seal is narrowly tailored.

III. CONCLUSION

For the foregoing reasons, Oracle respectfully requests that the Court grant leave to file under seal the materials discussed above.

MORGAN, LEWIS & BOCKIUS LLP

DATED: July 10, 2020

By: /s/ John A. Polito
John A. Polito

Attorneys for Plaintiffs Oracle USA, Inc., Oracle
America, Inc. and Oracle International
Corporation

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of July, 2020, I electronically transmitted the foregoing ORACLE'S MOTION TO SEAL ORACLE'S MOTION FOR ORDER TO SHOW CAUSE WHY RIMINI STREET, INC. SHOULD NOT BE HELD IN CONTEMPT AND SUPPORTING DECLARATIONS AND EXHIBITS and [PROPOSED] ORDER to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all counsel in this matter; all counsel being registered to receive Electronic Filing.

MORGAN, LEWIS & BOCKIUS LLP

DATED: July 10, 2020

By: /s/ John A. Polito
John A. Polito

Attorneys for Plaintiffs Oracle USA, Inc., Oracle
America, Inc. and Oracle International
Corporation